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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/357,957	07/21/1999	RICHARD LEVY	01064.0011-0	9917

7590 09/07/2004

THE LAW OFFICES OF ROBERT J. EICHELBURG  
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EXAMINER

TOOMER, CEPHIA D

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 09/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/357,957	<b>Applicant(s)</b> LEVY, RICHARD	
	<b>Examiner</b> Cephia D. Toomer	<b>Art Unit</b> 1714	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 29-43, 45-50, 52, 53 and 55-57 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 52 and 53 is/are allowed.
- 6) ☒ Claim(s) 29-31, 33, 34, 38, 41-43, 45-50, and 67-68 is/are rejected.
- 7) ☒ Claim(s) 32, 35-37, 39, 40, 55-66 and 69-71 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

### **DETAILED ACTION**

1. Applicant is advised that the Notice of Allowance mailed is vacated. If the issue fee has already been paid, applicant may request a refund or request that the fee be credited to a deposit account. However, applicant may wait until the application is either found allowable or held abandoned. If allowed, upon receipt of a new Notice of Allowance, applicant may request that the previously submitted issue fee be applied. If abandoned, applicant may request refund or credit to a specified Deposit Account.
2. The indicated allowability of claims 29-31, 33, 34, 38, 41-43, 45-50, 67 and 68 is withdrawn in view of the newly discovered reference(s) to Freeman (US 5,218,011) and Le-Khac (US 4,616,063). Rejections based on the newly cited reference(s) follow.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made

3. Claims 29-31, 33, 34, 38, 41-43, 45-50, 67 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman (US 5,218,011) in view of Le-Khac (US 4,616,063).

Freeman teaches a gel composition comprising a gel matrix, a thickener (soaps) and a water-absorbent polymer (see abstract). The gel matrix may be silicones, petroleum gels, high viscosity esters (fatty oils), glycol, olefins, mineral oil and

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fluorocarbons (see col. 7, lines 19-39). The water absorbent polymers include polyacrylic, maleic acids, acrylates, acrylamide and acrylonitrile (see col. 5, lines 55-68; col. 6, lines 1-29). The gel composition may also contain a hydrophilic substance such as fatty acids and rust inhibitors (lubricant additives)(see col. 7, lines 38-68; col. 9, lines 26-35). In Example 22, Freeman teaches a composition comprising white oil (petroleum oil), microcrystalline wax and a water absorbent polymer that is of the type described in 4,616,063 (Le-Khac).

Freeman does not specifically teach that the polymers of his invention absorb greater than 100 times its weight in water. However, Le-Khac teaches that the polymer illustrated in Example 22 of Freeman more than meets this limitation. Le-Khac teaches that the polymers of his invention have a water uptake up to 16,000% (see Table, col. 6).

Therefore, it would have been obvious to one of ordinary skill in the art to have used water-absorbent polymers that absorb greater than 100 times their weight in water and it would be reasonable to expect that the other polymers taught in Freeman would meet the limitation regarding the amount of water the polymers are capable of absorbing since the polymers of Example 22 of Freeman absorb greater than 100 times their weight in water.

4. Claims 32, 35-37, 39, 40, 55-66 and 69-71 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Freeman fails to teach or suggest that the lubricant gel of his invention may be a solid inorganic lubricant (claim 32), water and a lubricant additive (claim 35), oil and water (claim 36), a solid lubricant and water (claim 37), phosphates (claims 39 and 40) or chalcogenides of non-noble metals (claims 55-66).


5. Claims 52 and 53 are allowable because Freeman fails to teach or suggest that the lubricant gel of his invention may be comprised of water and a lubricant additive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Cephia D. Toomer  
Primary Examiner  
Art Unit 1714

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